

AMENDED IN ASSEMBLY APRIL 21, 2005

AMENDED IN ASSEMBLY APRIL 5, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1245

Introduced by Assembly Member Wolk

February 22, 2005

An act to add *and repeal* Chapter 7.8 (commencing with Section 12929.49) ~~to~~ of Part 6 of Division 6 of the Water Code, relating to water, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1245, as amended, Wolk. CALFED Bay-Delta Program.

Existing law, the California Bay-Delta Authority Act, establishes in the Resources Agency, the California Bay-Delta Authority until January 1, 2006, unless a certain determination is made. The act requires the authority and the implementing agencies to carry out programs, projects, and activities necessary to implement the Bay-Delta Program, defined to mean those actions that address the goals and objectives of the CALFED Bay-Delta Programmatic Record of Decision, dated August 28, 2000, or as it may be amended. The act requires the authority to review, approve, and make recommendations regarding certain annual program plans and project expenditures submitted by the implementing agencies based on prescribed criteria.

This bill would establish in the State Treasury the ~~California Bay-Delta~~ Environmental Water Account ~~Fund (EWA)~~ (*EWA Fund*) *for the benefit of the California Bay-Delta Environmental Water Account Program* and would require the ~~Director of Water Resources Secretary of the Resources Agency~~, in consultation with the ~~Director of Fish and Game~~ *others*, to administer the *EWA Fund*. The bill

would authorize the EWA *Fund* to receive state or federal funds, or contributions from any agency, organization, or person. The bill would authorize the money in the EWA *Fund*, upon appropriation by the Legislature to the ~~department~~ *secretary*, to be expended for the protection and recovery of fishery resources, as specified, the adjustment of the operations of the State Water Project or the federal Central Valley Project for those purposes, or the acquisition of water for those purposes in order to supplement that amount of water made available pursuant to regulatory action. The bill would continuously appropriate that portion of the moneys in the EWA *Fund* that is received in the form of contributions to the EWA *Fund*, to the ~~Department of Water Resources~~ *secretary* for one or more of these described purposes, as determined by the terms of the contribution.

The bill would authorize the ~~Director of Water Resources to adjust State Water Project operations for the protection and recovery of fishery resources in a manner that also improves water supply reliability for water users in the San Francisco Bay/Sacramento-San Joaquin Delta watershed and~~ *secretary* to accept contributions of water to carry out the bill's provisions. The bill would authorize the ~~Director of Water Resources~~ *secretary* to acquire and sell water for prescribed purposes and to impose fees on any agency, organization, or state or federal contractor that benefits from the operation of the environmental water account program. The bill would require the funds generated by the sale of acquired water and the imposition of fees to be deposited in the EWA *Fund*. The bill would require the ~~Director of Water Resources~~ *secretary* to prepare, and submit to the California Bay-Delta Authority, an annual report relating to the administration of the EWA *Fund*. *The bill would require the secretary to complete a comprehensive review, and submit a related report to the Legislature, relating to the administration of the EWA Fund. The bill's provisions would be repealed on January 1, 2009.*

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) In August 2000, the state and the federal government
- 4 jointly prepared a Record of Decision for the CALFED

1 Bay-Delta Program (CALFED ROD) to improve conditions in
2 the Sacramento-San Joaquin Delta. The goals of the CALFED
3 ROD included improved water supply reliability, ecosystem
4 restoration, water quality, and delta levee integrity.

5 (b) The CALFED ROD included a program for an
6 environmental water account (EWA) to provide water for the
7 protection and recovery of fish in addition to that amount of
8 water made available by means of existing regulatory actions
9 related to project operations. The Department of Fish and Game
10 and the federal government's fishery agencies (the United States
11 Fish and Wildlife Service and the National Marine Fisheries
12 Service) agreed to manage the water assets associated with the
13 EWA, while the Department of Water Resources and the United
14 States Bureau of Reclamation agreed to operate the State Water
15 Project (SWP) and the Central Valley Project (CVP) in certain
16 ways to protect fishery resources, subject to reimbursement of
17 the SWP and CVP for losses arising out of those operations. The
18 California Bay-Delta Authority Act explicitly authorized the
19 Department of Water Resources and the Department of Fish and
20 Game to implement the environmental water account program in
21 cooperation with these federal agencies.

22 (c) These state and federal agencies have operated the EWA
23 for four years, and have confirmed that the EWA's operations
24 can reduce the risk of conflicts over the effects of SWP/CVP
25 operations on the delta's fishery resources. The SWP and CVP
26 delta water export facilities have not suffered a substantial
27 pumping reduction arising out of a "take" of fish species listed
28 pursuant to the Endangered Species Act since 1999, despite the
29 occurrence of several relatively low water years. Accordingly,
30 SWP and CVP water supply reliability has improved and SWP
31 and CVP contractors have benefitted from this improved
32 reliability. Therefore, the time has arrived to establish the EWA
33 as a permanent part of the state's financial infrastructure to
34 address the needs of the delta.

35 SEC. 2. Chapter 7.8 (commencing with Section 12929.49) is
36 added to Part 6 of Division 6 of the Water Code, to read:

37
38 ~~CHAPTER 7.8. CALIFORNIA BAY-DELTA ENVIRONMENTAL~~
39 ~~WATER ACCOUNT~~
40

1 CHAPTER 7.8. ENVIRONMENTAL WATER ACCOUNT FUND

2
3 12929.49. (a) *There is established in the State Treasury the*
4 *Environmental Water Account Fund (EWA Fund) for the benefit*
5 *of the California Bay-Delta Environmental Water Account*
6 *Program.*

7 (b) *For the purposes of this chapter, the “California*
8 *Bay-Delta Environmental Water Account Program” or the*
9 *“environmental water account program” means the*
10 *environmental water account program established in accordance*
11 *with Division 26.4 (commencing with Section 79400).*

12 (c) *The Secretary of the Resources Agency shall administer the*
13 *EWA Fund, in consultation with the director, the Director of Fish*
14 *and Game, the United States Fish and Wildlife Service, the*
15 *National Marine Fisheries Service, and the United States Bureau*
16 *of Reclamation.*

17 (d) *The EWA Fund may receive state or federal funds, or*
18 *contributions from any agency, organization, or person.*

19 (e) *Upon appropriation by the Legislature to the secretary,*
20 *except as otherwise provided in subdivision (f), the money in the*
21 *EWA Fund shall be expended for any of the following purposes:*

22 (1) *The protection and recovery of fishery resources in a*
23 *manner that also improves water supply reliability for water*
24 *users in the San Francisco Bay/Sacramento-San Joaquin Delta*
25 *watershed.*

26 (2) *The adjustment of the operations of the State Water Project*
27 *or the federal Central Valley Project for the purposes of*
28 *paragraph (1).*

29 (3) *The acquisition of water for the purposes of paragraph (1)*
30 *to supplement that amount of water made available pursuant to*
31 *regulatory action.*

32 (f) *Notwithstanding Section 13340 of the Government Code,*
33 *the money in the EWA Fund that is received in the form of a*
34 *contribution to the EWA Fund is hereby continuously*
35 *appropriated, without regard to fiscal years, to the secretary for*
36 *one or more of the purposes set forth in subdivision (e), as*
37 *determined by the terms of the contribution.*

38 12929.50. (a) *The secretary may accept contributions of*
39 *water from any source to carry out this chapter.*

(b) The secretary may use water acquired from willing sellers for the purposes of this chapter for instream use or consumptive use by State Water Project or Central Valley Project contractors that otherwise would incur reduced water deliveries as a result of fishery-related actions that affect the operations of the State Water Project or the Central Valley Project.

(c) (1) The secretary may sell water acquired for the purposes of this chapter on terms the secretary, in consultation with the director, the Director of Fish and Game, the United States Bureau of Reclamation, the United States Fish and Wildlife Service, and the National Marine Fisheries Service, deems reasonable and in the long-term interest of achieving the purposes of this chapter.

(2) Funds generated pursuant to this subdivision shall be deposited in the EWA Fund and shall be used only for achieving the purposes of this chapter. To the extent that the water sold by the secretary was originally acquired with funds in the form of a contribution, the proceeds of that sale shall only be expended in a manner that is consistent with the terms of that contribution.

12929.51. The secretary may enter into cooperative agreements with state or federal agencies or other persons or entities that promote the purposes of this chapter.

12929.52. The Legislature finds and declares that contributions to the EWA Fund may be related to regulatory assurances from, or mitigating agreements with, state or federal fishery agencies. It is the intent of the Legislature that contributions should finance any benefits that contributors receive from the operation of the environmental water account program, and that state funds should finance general benefits to the public provided by the environmental water account program.

12929.53. (a) The secretary, in consultation with the director, the Director of Fish and Game, the United States Bureau of Reclamation, the United States Fish and Wildlife Service, and the National Marine Fisheries Service shall prepare, and submit to the California Bay-Delta Authority, an annual report relating to the administration of the EWA Fund.

(b) The annual report shall include an analysis of the benefits accruing to the state as a whole in the form of fishery protection or recovery, or to particular agencies, organizations, or State

1 *Water Project or Central Valley Project contractors in the form*
2 *of improved water supply reliability. The report shall include a*
3 *specific description of the costs and benefits of the activities*
4 *financed by the EWA Fund, including the benefits arising out of*
5 *particular conflicts that were avoided.*

6 *12929.54. Nothing in this chapter creates an entitlement,*
7 *right, or interest in the state's water resources on the part of any*
8 *state or federal contractor or water user relying on the State*
9 *Water Project or Central Valley Project. The funds in the EWA*
10 *Fund shall not be used to pay just compensation for any claim of*
11 *an unconstitutional taking of water or water rights. State funds in*
12 *the EWA Fund shall not be used to achieve compliance by the*
13 *State Water Project or the Central Valley Project with state*
14 *water quality control requirements.*

15 *12929.55. This chapter does not limit the authority of the*
16 *department or the Department of Fish and Game to carry out the*
17 *environmental water account program.*

18 *12929.56. On or before January 1, 2008, the secretary, in*
19 *consultation with the director, the Director of Fish and Game,*
20 *the United States Fish and Wildlife Service, the National Marine*
21 *Fisheries Service, and the United States Bureau of Reclamation,*
22 *shall complete a comprehensive review, and submit a related*
23 *report to the Legislature, relating to the administration of the*
24 *EWA Fund. The comprehensive review and report shall include*
25 *an evaluation of all matters addressed in the annual reports*
26 *prepared pursuant to Section 12929.53, including a discussion as*
27 *to whether the funds deposited in the EWA Fund may be of*
28 *greater benefit to the fishery if expended for purposes other than*
29 *the purposes of this chapter. The comprehensive review and*
30 *report shall include recommendations as to whether the EWA*
31 *Fund should be continued in existence.*

32 *12929.57. This chapter shall remain in effect only until*
33 *January, 1, 2009, and as of that date is repealed, unless a later*
34 *enacted statute, that is enacted before January 1, 2009, deletes*
35 *or extends that date.*

36 ~~*12929.49. (a) There is established in the State Treasury the*~~
37 ~~*California Bay-Delta Environmental Water Account (EWA). The*~~
38 ~~*director shall administer the EWA, in consultation with the*~~
39 ~~*Director of Fish and Game. The EWA may receive state or*~~

1 federal funds, or contributions from any agency, organization, or
2 person.

3 (b) Upon appropriation by the Legislature to the department,
4 except as otherwise provided in subdivision (c), the money in the
5 EWA shall be expended for any of the following purposes:

6 (1) ~~The protection and recovery of fishery resources in a~~
7 ~~manner that also improves water supply reliability for water users~~
8 ~~in the San Francisco Bay/Sacramento-San Joaquin Delta~~
9 ~~watershed.~~

10 (2) ~~The adjustment of the operations of the State Water Project~~
11 ~~or the federal Central Valley Project for the purposes of~~
12 ~~paragraph (1).~~

13 (3) ~~The acquisition of water for the purposes of paragraph (1)~~
14 ~~to supplement that amount of water made available pursuant to~~
15 ~~regulatory action.~~

16 (e) ~~Notwithstanding Section 13340 of the Government Code,~~
17 ~~the money in the EWA that is received in the form of a~~
18 ~~contribution to the EWA is hereby continuously appropriated,~~
19 ~~without regard to fiscal years, to the department for one or more~~
20 ~~of the purposes set forth in subdivision (b), as determined by the~~
21 ~~terms of the contribution.~~

22 ~~12929.50. (a) Consistent with Section 11917, the director~~
23 ~~may adjust State Water Project operations for the purposes of~~
24 ~~paragraph (1) of subdivision (b) of Section 12929.49.~~

25 (b) ~~The director may accept contributions of water from any~~
26 ~~source to carry out this chapter.~~

27 (c) ~~The director may use water acquired for the purposes of~~
28 ~~this chapter for instream use or consumptive use by State Water~~
29 ~~Project or Central Valley Project contractors that incur reduced~~
30 ~~water deliveries as a result of the implementation of the~~
31 ~~environmental water account program.~~

32 (d) ~~The director may sell water acquired for the purposes of~~
33 ~~this chapter on terms the director deems reasonable and in the~~
34 ~~long-term interest of achieving the purposes of this chapter.~~
35 ~~Funds generated pursuant to this subdivision shall be deposited in~~
36 ~~the EWA.~~

37 ~~12929.51. The director may enter into cooperative~~
38 ~~agreements with state or federal agencies or other persons or~~
39 ~~entities that promote the purposes of this chapter.~~

1 ~~12929.52. (a) The director may impose fees upon any~~
2 ~~agency, organization, or State Water Project or Central Valley~~
3 ~~Project contractor that benefits from the operation of the~~
4 ~~environmental water account program, as provided in this chapter~~
5 ~~and Division 26.4 (commencing with Section 79400).~~

6 ~~(b) Funds generated by the imposition of fees pursuant to~~
7 ~~subdivision (a) shall be deposited in the EWA.~~

8 ~~12929.53. The director shall prepare, and submit to the~~
9 ~~California Bay-Delta Authority, an annual report relating to the~~
10 ~~administration of the EWA. The annual report shall include an~~
11 ~~analysis of the benefits accruing to the state as a whole in the~~
12 ~~form of fishery protection or recovery, or to particular agencies,~~
13 ~~organizations, or State Water Project or Central Valley Project~~
14 ~~contractors in the form of improved water supply reliability. The~~
15 ~~report shall include a specific description of the costs and~~
16 ~~benefits of the activities financed by the EWA, including the~~
17 ~~benefits arising out of particular conflicts that were avoided.~~

18 ~~12929.54. Nothing in this chapter creates an entitlement,~~
19 ~~right, or interest in the state's water resources on the part of any~~
20 ~~state or federal contractor or water user relying on the State~~
21 ~~Water Project or Central Valley Project. The funds in the EWA~~
22 ~~may not be used to pay just compensation for any claim of an~~
23 ~~unconstitutional taking of water or water rights. No state funds in~~
24 ~~the EWA may be used to achieve compliance by the State Water~~
25 ~~Project or the Central Valley Project with state water quality~~
26 ~~control requirements.~~

27 ~~12929.55. This chapter does not limit the authority of the~~
28 ~~department or the Department of Fish and Game to carry out the~~
29 ~~environmental water account program as provided in Division~~
30 ~~26.4 (commencing with Section 79400).~~